IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21-9-2005

CORAM

THE HONOURABLE MR.JUSTICE N.DHINAKAR
AND
THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM
C.A.No.200 of 2001

State by:
Inspector of Police
Gobi Police Station
Erode District
rep by
Public Prosecutor
High Court, Madras ... Appellant/Petitioner

vs

1.Gulam Babu
2.Thangam @ Meenakshi Kutty
3.Muthu @ Angamuthu .. Respondents /accused

Criminal appeal preferred under Sec.378 of the Code of Criminal Procedure against the judgment of acquittal passed by the II Additional Sessions Judge, Erode, in S.C.No.85/99 dated 13.10.1999.

For Appellant : Mr.M.K.Subramanian
Government Advocate
(Criminal Side)

For Respondents : Mr.N.Manokaran

JUDGMENT

(Judgment of the Court was delivered by M.CHOCKALINGAM, J.)

This is an appeal by the State on a judgment of acquittal made by the learned II Additional Sessions Division, Erode, in S.C.No.85/99, wherein the respondents were shown as accused.

2. The first accused stood charged under Sec.302 of I.P.C., while the second and third accused were charged under Sec.302 read with 34 of I.P.C. All the three accused were charged under Sec.201 of I.P.C. On trial, the respondents/accused were acquitted by the trial Court. Hence, this appeal.

3. The short facts necessary for the disposal of this appeal can be stated thus:

P.W.6 is the wife of the deceased, Syed Mohammed. They were living at Karungalpalayam, Erode. They had a daughter. P.W.6 was employed in a house as servant-maid. While so, Syed Mohammed developed illicit intimacy with the

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second accused, and he was living near Karungalpalayam Vaikkal. Thereafter, they went to Gobichettipalayam. It was the usual practice of Syed Mohammed to go over to Karungalpalayam to meet his wife and the female child. The house in Door No.1A, Anumantharayan Koil Street, belonged to P.W.3. His mother, P.W.4, was occupying the ground floor, while the first floor was leased out to the second accused. It was occupied by the first and the second accused. The second accused was running a tea stall at Vaikkal Road. P.W.5 used to go over there often to have tea. Thus, he knew A-1 and A-2. A-1 and A-2 decided to do away with the said Syed Mohammed, who developed illicit intimacy with the second accused for which A-3 also connived with them.

4. On the date of occurrence, namely 7.2.1998, at 1.00 A.M., A-1 dashed a stone on the head of Syed Mohammed, and he was murdered. The dead body was put in a gunny bag, and all the accused were standing near a tank. P.W.5, who was returning from Cinema at that time, found the accused standing with a gunny bag and asked them, when the accused informed him that they were old clothes and they were putting them in the tank. On 9.2.1998 at about 12.30 P.M., P.W.1, the Village Administrative Officer of Veerapandy village, was in his Office. He was informed by his assistant, P.W.2, that a dead body was found floating in the tank. Then, P.W.1 visited the spot and found a gunny bag containing a dead body of a male person. He rushed to Gopichettipalayam Police Station and informed the same to P.W.19, the Head Constable, who was on duty that time. On the strength of Ex.P1 report, given by P.W.1, P.W.19 registered a case in Crime No.63/98 under Sec.302 of I.P.C. Printed First Information Report, Ex.P10 was sent to Court.

5. P.W.20, the Inspector of Police, took up investigation in the crime. He proceeded to the scene of occurrence, made an inspection in the presence of two witnesses and prepared Ex.P5, the observation mahazar, and Ex.P11, the rough sketch. M.Os.1 to 6 were recovered under a cover of mahazar, Ex.P6. He conducted inquest on the dead body of Syed Mohammed in the presence of panchayatdars and witnesses and prepared Ex.P12, the inquest report. Following the same, a requisition, Ex.P7, was forwarded to the Government Hospital, for conducting autopsy.

6. On receipt of the said requisition, P.W.16, the Civil Assistant Surgeon, attached to the Government Hospital, Gobichettipalayam, conducted autopsy on the dead body of Syed Mohammed and found the following injury.

"Crush injury of whole upper 3/4th of head with multiple fracture of vault base of skull.
Missing of brain and eyeballs."

The Doctor issued Ex.P8, the postmortem certificate, and

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opined that the deceased would appear to have died of crush injury on head, 3 to 7 days prior to autopsy.

7. Pending investigation, A-1 was arrested on 13.2.1998 at 7.30 A.M. He gave a confessional statement, pursuant to which M.O.9, a shirt, was recovered under a mahazar, Ex.P13. A-1 identified A-2, and A-2 was arrested at 9.15 A.M., pursuant to which M.Os.10 to 13 were recovered under a mahazar, Ex.P14. M.O.14 series, M.O.15, a blade, and M.O.16 produced by A-1, were recovered under a mahazar, Ex.P15. P.W.20 went over to Erode, and with the help of P.Ws.6 and 7, he opened a box belonging to the deceased, with the help of a key M.O.6. Then, M.O.7, a lock, was recovered under a mahazar Ex.P2. On 4.3.1998, A-3 was arrested, when he gave a confessional statement, the admissible part of which is Ex.P18. Pursuant to the same, M.O.17, a lunghi, was recovered under a mahazar, Ex.P19. The material objects were subjected to chemical analysis pursuant to a requisition given by the Investigating Officer. Ex.P22, the Chemical Analyst's report, and Ex.P23, the Serologist's report, were received by the Court. On completion of investigation, the final report was filed by the Investigating Officer against the respondents/accused.

8. The case was committed to Court of Session and necessary charges were framed against the accused, referred to above. In order to substantiate the charges levelled against the accused, the prosecution examined 20 witnesses and relied on 23 exhibits and 17 material objects. On completion of the evidence on the side of the prosecution, all the accused were questioned under Sec.313 of Cr.P.C. as to the incriminating circumstances found in the evidence of the prosecution witnesses. They denied them as false. No defence witnesses were examined. On completion of trial, both sides were heard by the trial Court, and on consideration of the submissions made, and scrutiny of the materials, the trial Court took a view that the prosecution has not proved the case beyond reasonable doubt and acquitted all the accused of all the charges. Hence, this appeal at the instance of the State.

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9. The learned Government Advocate (Criminal Side) inter alia would submit that though the prosecution relied on circumstantial evidence, there were sufficient circumstances placed and proved in order to prove its case; that according to P.W.5, the accused were well known to him; that he found A-1 and A-2 standing near Theppakulam with a gunny bag at 1.30 A.M., in the mid night; that when he questioned them, they informed him that they were simply waste materials and to be put in the tank; that this was a strong circumstance against the accused; that P.W.6 has spoken to the fact that the deceased was living with A-2 at Gobichettipalayam; that she would further add that the key

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which was recovered from the dead body of Syed Mohammed, was another key of the box of the deceased, which was in the house of P.W.6, and she had got another key; that apart from that, on the confessions made, the material objects were recovered, which were found containing bloodstains, and thus, the scientific evidence was also in favour of the prosecution; but, the lower Court has acquitted the accused, despite sufficient materials and circumstances which were placed and proved, and hence, the judgment of the lower Court has got to be set aside.

10. This Court heard the learned Counsel Mr.N.Manokaran, appearing for the respondents.

11. In the instant case, it is not in controversy that the dead body of Syed Mohammed was found in a tank at Gobichettipalayam. The dead body was subjected to postmortem, and the Doctor has given his opinion stating that the deceased would appear to have died 3 to 7 days prior to the autopsy, and death was due to the crush injury sustained. It is also not a fact in question before the lower Court or before this Court.

12. The question what arose before the Court below and equally here also, is whether the prosecution has proved the case beyond reasonable doubt. This Court is of the considered opinion, on scrutiny of the materials available and consideration of the submissions made, that the lower Court was perfectly correct in rejecting the prosecution case. Though the prosecution had marched 20 witnesses, no one had spoken about the occurrence. Thus, the prosecution rested its case on the circumstantial evidence. Needless to say that in a case where the prosecution rests its case on the circumstantial evidence, it has to place and prove all the necessary circumstances so that a chain is made without any doubt, and it should be pointing to the hypothesis that except the accused, no one could have committed the offence.

13. In the instant case, the prosecution neither placed sufficient circumstances nor proved the same indicating the guilt of the accused. According to P.W.6, her husband, Syed Mohammed, married her before 10 years back, and they have got a female child, and they were living in Karungalpalayam, and subsequently, he developed illicit intimacy with A-2 and was living at Karungalpalayam Vaikkal, and thereafter, they were living at Gobichettipalayam. It is the evidence of P.W.3 that A-1 and A-2 were tenants in the first floor of his house, while P.W.4, his mother, was living in the ground floor. To that extent only, the prosecution had the benefit of their evidence. As to the connection of the accused with the crime, neither P.W.3 nor P.W.4 had spoken anything.

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14. The prosecution much relied on the evidence of P.W.5, according to whom, he used to visit A-2's tea shop, and while he was returning from cinema in the night hours, he found A-1 and A-2 standing near the tank along with a gunny bag. He has well admitted that for returning from cinema to his residence, there was no necessity to go via Theppakulam, and he has got some other route. From his evidence it would be clear that he has no explanation to offer how he happened to use that route. The lower Court has adduced proper reasons that he was a planted witness in order to say that the accused were having the gunny bag in hands. The reasons adduced by the trial Court, in the opinion of this Court, are sound.

15. So far as the recovery part is concerned, P.Ws.12 and 13, who were examined by the prosecution for the purpose of proving the same, have turned hostile, and thus, the arrest of the accused, the confessions made by them and the alleged recovery of the material objects could not be accepted by the lower Court. In the instant case, except this evidence, nothing was available, and therefore, the prosecution has not brought forth or placed or proved the necessary or sufficient circumstance. It can be well stated that not even one circumstance is placed in favour of the prosecution connecting the accused with the crime. The trial Court has marshaled the evidence proper, considered the same, adduced proper reasons and acquitted the accused, since it was not able to see any circumstance connecting the accused with the crime. This Court is unable to notice any reason to take a different view from that of the lower Court. At this juncture, the Court is mindful of the caution by the Apex Court that in a case where the trial Court on evidence found the accused not guilty and acquitted them, unless and until compelling circumstances are noticed, the judgment of the trial Court should not be reversed. In the instant case, this Court is unable to notice any reason to interfere with the judgment of the trial Court, since there are no compelling circumstances warranting so, and the judgment of the trial Court is not perverse. Accordingly, the judgment of the trial Court is sustained.

16. In the result, this criminal appeal fails, and the same is dismissed.

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To:
1)The II Additional Sessions Judge, Erode.
2)The II Additional Sessions Judge, Erode,
  Through The Principal Sessions Judge, Erode.
3)The District Collector, Erode District.
4)The Director General of Police, Chennai.
5)The Public Prosecutor, High Court, Madras.
6)The Inspector of Police, Gobi Police Station
     Erode District

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